

## REMARKS

This communication is in response to the Office Action of **September 25, 2008** wherein species A-I were identified and election of a single species was required.

Applicants submit that this restriction requirement is untimely under 35 CFR 1.146 as prosecution in this application began with the first Office Action dated June 7, 2004. 35 CFR 1.146 states in part:

In the *first* action on an application containing a generic claim to a generic invention (genus) and claims to more than one patentably distinct species embraced thereby, the examiner may require the applicant in the reply to that action to elect a species of his or her invention to which his or her claim will be restricted if no claim to the genus is found to be allowable.  
(emphasis added)

In response, Applicants provisionally elects species E, corresponding to Figure 5 of the application as filed. Claims 1, 2, 4-16, 18-24, and 29-32 are readable upon the elected species.

The Office Action asserted that “no claims are thought to be generic.” Applicants disagree. Applicants submit that at least independent claims 1, 5, 6, 8, 14, 22, 24 and 32 are readable upon a non-elected species, for example species F, directed to figure 6A-E. Therefore, Applicants reserve the right to rejoin the non-elected species under 37 CFR 1.141 should a generic linking claim be found allowable.

Applicants note that in addition to those species identified in the Office Action as corresponding to specific figures depicted in the Application, additional species may exist which are described in the specification and claims and which are not subject to the restriction requirement identified by the Office Action.

**Conclusion**

In view of the foregoing it is believed that the present application is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: November 7, 2008

By: / Jennifer L. Buss /  
Jennifer L. Buss  
Registration No.: 57321

6640 Shady Oak Dr., Suite 400  
Eden Prairie, MN 55344-7834  
Telephone: (952) 563-3000  
Facsimile: (952) 563-3001

f:\wpwork\jlb\14166us03\_rsp\_20081017.doc